

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ARTHUR EDWARD MARQUEZ,  
*Petitioner.*

No. 2 CA-CR 2013-0472-PR  
Filed January 22, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

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Petition for Review from the Superior Court in Yavapai County

No. P1300CR201000084

The Honorable Tina R. Ainley, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Arthur E. Marquez, Albuquerque, New Mexico  
*In Propria Persona*

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

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M I L L E R, Judge:

¶1 Petitioner Arthur Marquez seeks review of the trial court's order dismissing as untimely his post-conviction-relief proceeding, initiated pursuant to Rule 32, Ariz. R. Crim. P. We will not reverse a trial court's ruling in a post-conviction-relief proceeding "absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Marquez has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Marquez was convicted of aggravated driving while under the influence of an intoxicant while his driver license was suspended, canceled, restricted, revoked, or refused, and possession of marijuana. He was placed on probation, but on July 16, 2012, the trial court revoked probation after Marquez admitted having violated the terms of his probation and sentenced Marquez to a slightly mitigated prison term of two years for the DUI conviction and a concurrent term of .75 years for the remaining count.

¶3 Marquez filed a notice of post-conviction relief on October 22, 2012. He filed a petition that same day. In the petition he appeared to assert defenses to the charges and claimed that the state should not have prosecuted him because of the lack of evidence and that trial counsel had been ineffective both in failing to file a motion to dismiss the charges and in failing to provide him with forms to timely file or to timely file such forms so he could seek post-conviction relief following the initial conviction. The trial court dismissed the notice and petition summarily on October 24, 2012, finding the notice untimely.

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¶4 On review, Marquez again asserts, with slightly more detail but without any supporting authority, legal or factual, there existed various defenses to the charges and the state should not have prosecuted him. He again contends trial counsel had been ineffective for not pursuing those defenses. He does not, however, challenge the trial court's dismissal of his notice of post-conviction relief on the ground that it was untimely. Nor does he again assert trial counsel had been ineffective in failing to provide him with or file the forms necessary to commence a timely post-conviction proceeding.

¶5 Moreover, the trial court's conclusion was correct as was its summary dismissal of the notice. Marquez was convicted and sentenced in January 2010. At that time, he received and signed a form acknowledging he had received a notice of rights of review after conviction, which informed him of the applicable time limits for obtaining appellate review, the precise forms required to do so, and information about where those forms could be obtained. Marquez did not file the notice and petition, which purported to challenge the conviction only, not the revocation of probation and sentences, until October 2012. This was two years past the ninety-day period within which he was required to file the notice of post-conviction relief. *See* Ariz. R. Crim. P. 32.4(a); *see also* Ariz. R. Crim. P. 32.2(b) (permitting summary dismissal of notice when untimely).

¶6 Based on the foregoing, we grant the petition for review but deny relief.